FISCAL LAW

Holly Friedrich
Contracts SFA

INTRODUCTION

- Antideficiency Act
- Appropriation
- Authorization
- Bona Fide Need Rule
- Expiring/Canceling Funds
- Prevalidation

ANTIDEFICIENCY ACT

- Government Agents May Not
  - Obligate
  - Spend
  - Authorize Obligations
  - Authorize Expenditures
- Without Having Sufficient Funds

ANTIDEFICIENCY ACT

- Includes
  - Obligating Funds in Excess of, or in Advance of, an Appropriation
  - May Enter Into Contracts in Advance of an Appropriation, but Only if Subject to a Limitation of Funds Clause
    - May Not Accept Goods or Services Until Actually Receive Funds

PENALTIES

- Adverse Personnel Actions
  - Removal, Suspension, or Other Appropriate Disciplinary Action
  - Good Faith Mistake is NOT a Defense

- Criminal Penalties
  - Knowing and Willful Violation is a Class E Federal Felony with a Maximum Punishment of 2 Years in Jail and a $5000 Fine
  - Knowing and Willful Concealment of a Violation is also a Federal Felony

KEY TERMS

- **Commitment**
  - An Administrative Reservation of Funds in Anticipation of Future Obligation
    - Issuing a Commitment Authorizing Obligations in Excess of an Appropriation or Formal Subdivision May Result in an ADA Violation

KEY TERMS

- **Obligation**
  - Act Legally Binding the Government to Make Payment
- **Expenditure**
  - Authorization for Expenditure of Funds from the Treasury Resulting from Presentation of a Voucher or Claim for Services or Products Delivered
- **Outlay**
  - Cash Paid by the Treasury, Including EFT

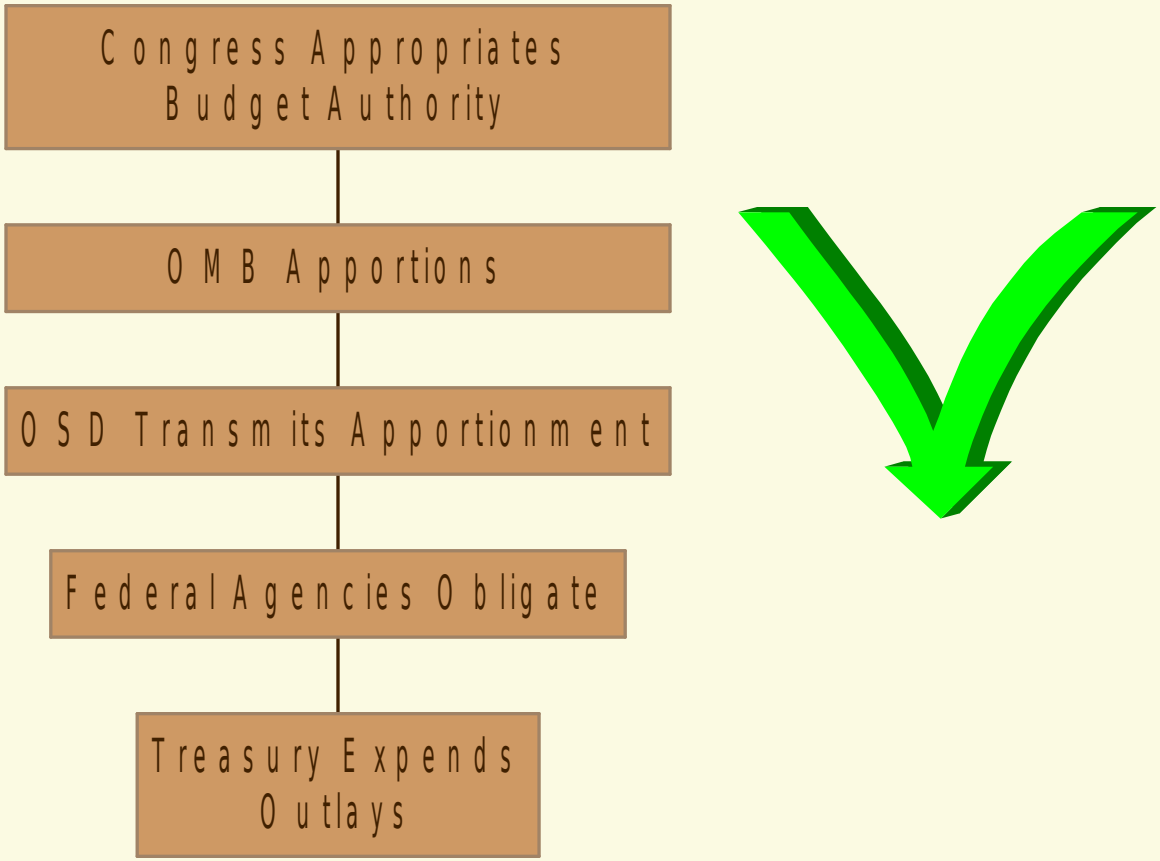
ADA ISSUES

- Purpose Statute Violations
  - If Proper Funds Not Available, at the Time Obligation is Made, at the Appropriation or Formal Subdivision Level
  - Okay if Proper Fund was Available, Remained Continuously Available, and was Available at Time Corrected

ADA ISSUES

- Bona Fide Need Rule Violations
  - Funds Only Available for Definite Time to Meet Real Needs of that Period
  - If Funds Not Available in Proper Fiscal Year Account to Make an Adjustment
- Open Ended Indemnification Provisions
  - Violates ADA by Obligating an Agency in Advance of an Appropriation
  - Unfunded Contingent Liabilities

FLOW OF FUNDS



APPROPRIATION

- Legal Basis for Withdrawing Funds From the Treasury
- May Contain Specific Provisions for Specific Expenditures

PUTS MONEY IN THE CHECKBOOK

AUTHORIZATION

- Congress Authorizes Purposes of Appropriations
- Generally, DoD Can Not Expend or Obligate Appropriations Without Authorization

OPENS THE CHECKBOOK

BONA FIDE NEED RULE

- Analysis Focuses on Timing of Obligating Funds and Whether Obligation is for a Current Government Need
- Government's Requirement and Nature of Goods or Services Determine when Bona Fide Need Arises
- Need Determinations are Fact-Specific

BONA FIDE NEED RULE

- Application for Supply Contracts
  - Determined by Date Government will Actually be Able to USE the Supplies
  - Supply Needs of Next Fiscal Year are Bona Fide Need of the Next Fiscal Year
  - Exceptions
    - Long Lead Time
    - Stock Level

BONA FIDE NEED RULE

- Service Contracts
  - Need is Determined by the Year the Contractor will Perform the Services
  - Nonseverable vs. Severable
    - Services Produce Single or Unified Outcome, Product or Report they are Nonseverable
    - Government Must Fund Entire Effort with Funds Available for Obligation at Time Contract is Executed if Contract is for Nonseverable Services

EXPIRING VS. CANCELING

- Obligation
  - Act Legally Binding the Government to Make Payment
- Expiring Funds
  - No Longer Available for Obligation
- Canceling Funds
  - No Longer Available for Payment

OBLIGATION AVAILABILITY

OR DO YOU KNOW WHEN YOUR FUNDS EXPIRE?

- O&M Funds
  - 1 Year
- R&D Funds
  - 2 Years
- Procurement Funds
  - 3 Years
- Military Construction
  - 5 Years

EXPENDITURE AVAILABLITY

OR DO YOU KNOW WHEN YOUR FUNDS CANCEL?

- All Funds Available for Expenditure for 5 Years After Obligation Period Ends

- After end of Expenditure Period… Funds Cancel and Are no Longer Available for Payment Purposes

WHAT DOES THIS MEAN?

- Example: FY 1998

	O&M	R&D	Proc	Const
Expire for Obl		1998	1999	2000
2002				
Cancel for Payment		2003	2004	2005
2007				

COLOR OF MONEY

- How do YOU Know Which Funds Obligated?
- Long Line Accounting and Appropriation Incorporated into Contract
  - Identified by Two Digit ACRN (ex: ACRN AA)
- Appropriation/Fund Codes Different for Each Service (See Handout)

FUND CITATION

- First 7 Digits Key in Identification
  - First 2 Digits = Source of Funds
  - Third Digit = Fiscal Year
  - Next 4 Digits = Color of Money
- Example:
  - Army Procurement
    - 21 8 2031
      - 21 = Source of Funds
      - 8 = FY 1998
      - 2031 = Procurement Funds
  - Quiz - When Would These Funds Cancel?

CANCELED FUNDS?

- DCMC Gets Report of Contracts/ACRNs That Are Identified for Cancellation that FY
- Work With DFAS and Contractor to Resolve
  - Ship!
  - Get Invoices Submitted!
- If Funds Cancel
  - DFAS Responsibility to Get Current Year Funds from Buying Commands for Payment

PREVALIDATION

- Improve Integrity of Financial Management Process
  - Match Disbursements to Specific Obligation
  - Performed by DFAS in Conjunction with Specific Accounting Stations
  - Improves Accuracy of Contract Payments

THRESHOLDS FOR PREVAL

- FY 1996 or Earlier Contracts
  - Invoices Greater than $1M Must be Prevalidated Prior to Payment
- FY 1997 Contracts On
  - Invoices Greater than $2500 Must be Prevalidated Prior to Payment
    - Eventually ALL Invoices Will be Require Prevalidation
- Consequence?
  - May Take Longer for Contractor to Get Paid